

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

A.A.B., *a minor, by and through his
Guardian Ad Litem*, DNIEPER
VEGAVILLALOBOS,

Plaintiff,

v.

CITY OF PORTERVILLE, *et al.*,

Defendants.

Case No. 1:25-cv-00261-EPG

ORDER GRANTING MOTION TO APPOINT
GUARDIAN AD LITEM

(ECF No. 7)

This is a civil rights action filed under 42 U.S.C. § 1983. Now before the Court is the motion to appoint Dnieper Vegavillalobos as the guardian ad litem for the minor Plaintiff A.A.B. (ECF No. 7). For the following reasons, the Court will grant the motion.

I. SUMMARY OF THE MOTION

The motion, which is supported by Vegavillalobos's declaration, states in part as follows regarding Vegavillalobos: (1) He "is the pastor for and family friend of Plaintiff" and they "have known each other for years"; (2) He "is fully competent to understand and protect the rights of the Plaintiff, and is willing to serve as the Plaintiff's guardian ad litem"; and (3) He "is truly dedicated to protecting Plaintiff's best interests and will faithfully adhere to his obligation to act in the best interests of Plaintiff should he be appointed Plaintiff's guardian ad litem."

1 Additionally, Plaintiff's counsel—Ty Clarke—has filed a declaration, stating in part as
 2 follows as to counsel and counsel's office: (1) "Our office has been retained by Plaintiff A.A.B.'s
 3 mother and father to represent Plaintiff A.A.B."; (2) "Pointer & Buelna, LLP – Lawyers for the
 4 People became involved in this case when Plaintiff A.A.B.'s parents contacted our office via
 5 telephone to seek representation for Plaintiff A.A.B."; (3) counsel has no known relation to the
 6 Defendants; and (4) "Pointer & Buelna, LLP – Lawyers for the People has been retained by
 7 Plaintiff A.A.B.'s parents to represent Plaintiff A.A.B. on a contingency basis. Our office has not
 8 received any compensation for this representation." (ECF No. 9)

9 Counsel has provided a copy of the retainer agreement in this case, which provides for a
 10 25% contingency fee upon the signing of the agreement and 33% if the case is settled within 90
 11 days of the pretrial conference and/or anytime afterwards.

12 II. LEGAL STANDARDS

13 Under Federal Rule of Civil Procedure 17(c)(2), "[a] minor or an incompetent person who
 14 does not have a duly appointed representative may sue by a next friend or by a guardian ad
 15 litem." Fed. R. Civ. P. 17(c)(2). Local Rule 202 further states, in pertinent part:

- 16 (a) **Appointment of Representative or Guardian.** Upon commencement of an
 17 action or upon initial appearance in defense of an action by or on behalf of a
 18 minor or incompetent person, the attorney representing the minor or
 19 incompetent person shall present (1) appropriate evidence of the appointment
 20 of a representative for the minor or incompetent person under state law or (2) a
 motion for the appointment of a guardian ad litem by the Court, or, (3) a
 showing satisfactory to the Court that no such appointment is necessary to
 ensure adequate representation of the minor or incompetent person. See Fed.
 R. Civ. P. 17(c).

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- 22 (c) **Disclosure of Attorney's Interest.** When the minor or incompetent is
 23 represented by an attorney, it shall be disclosed to the Court by whom and the
 24 terms under which the attorney was employed; whether the attorney became
 25 involved in the application at the instance of the party against whom the
 causes of action are asserted, directly or indirectly; whether the attorney
 stands in any relationship to that party; and whether the attorney has received
 or expects to receive any compensation, from whom, and the amount.

26 E.D. Cal. L.R. 202(a), (c).

27 A guardian ad litem needs to be dedicated to the best interests of the minor and "must not
 28 face an impermissible conflict of interest with the [minor]." *AT&T Mobility, LLC v. Yeager*, 143

1 F. Supp. 3d 1042, 1054 (E.D. Cal. 2015). The decision to appoint a guardian ad litem “must
 2 normally be left to the sound discretion of the trial court.” *United States v. 30.64 Acres of Land*,
 3 795 F.2d 796, 804 9th Cir. 1986).

4 **III. DISCUSSION**

5 Plaintiff lacks the capacity to sue under California law. *See Ramirez Fonua v. City of*
 6 *Hayward*, No. 21-CV-03644 SBA, 2022 WL 36007, at *1 (N.D. Cal. Jan. 4, 2022) (“Under
 7 California law, an individual under the age of eighteen may enforce his or her rights by civil
 8 action or other legal proceedings in the same manner as an adult, except that a guardian must
 9 conduct the action or proceedings.”) (citing Cal. Fam. Code §§ 6500, 6601); Cal. Civ. Proc. Code
 10 § 372 (“When a minor, a person who lacks legal capacity to make decisions . . . is a party, that
 11 person shall appear either by a guardian or conservator of the estate or by a guardian ad litem
 12 appointed by the court in which the action or proceeding is pending, or by a judge thereof, in each
 13 case.”); Fed. R. Civ. P. 17(b) (noting that capacity to sue for an individual who is not acting in
 14 representative capacity is determined by the law of the individual’s domicile).

15 Therefore, appointment of a guardian ad litem is necessary and appropriate in this case.
 16 Also, there does not appear to be any conflict of interest between Plaintiff and Vegavillalobos.
 17 Additionally, there is nothing to indicate that he would not act in Plaintiff’s best interests.

18 Lastly, the Court concludes that attorney Ty Clarke has provided a sufficient disclosure of
 19 attorney’s interest as required by Local Rule 202(c).

20 **IV. CONCLUSION AND ORDER**

21 Accordingly, IT IS ORDERED as follows:

- 22 1. The motion to appoint a guardian ad litem (ECF No. 7) is granted.
- 23 2. Dnieper Vegavillalobos is appointed as the guardian ad litem for Plaintiff A.A.B.

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1 3. Should there be a settlement of any claim brought on behalf of Plaintiff, counsel is
2 directed to seek court approval as required by Local Rule 202(b). Further, counsel must
3 ensure that all of Local Rule 202's requirements are followed.

4 IT IS SO ORDERED.

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6 Dated: March 11, 2025

/s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE